

STATEMENT OF REP. JOHN CONYERS, JR.
Floor Debate
H.R. 3313, the "Marriage Protection Act of 2003"
Thursday, July 22, 2004

I rise in strong opposition to this unconstitutional, discriminatory, divisive, and unprecedented bill. The only reason we are debating today is that the President is in danger of losing his job and wants to detract attention from his failure in Iraq and to bolster support amongst right-wing conservatives.

In the past few weeks, I am sorry to say the death toll of U.S.-led forces in Iraq topped 1,000. The bipartisan 9-11 Commission found, contrary to the President's implications, that there was no "collaborative relationship" between Iraq and Al Qaeda. And we all know that no weapons of mass destruction have been found in Iraq.

What did the President do about it? He followed the advice of conservative organizers and "changed the subject" so he could have a chance of winning in November.

That is why we are here. The President and the Republican leadership know that a constitutional amendment could not pass; in fact, it failed the Senate last week. Instead, they are moving this divisive and unconstitutional bill, which proposes to strip all federal courts and the Supreme Court from reviewing not just one but two acts of Congress.

I cannot believe that proponents of this bill understand its implications. Imagine if, in the early 1950's, a conservative Congress had succeeded in stripping the federal courts of jurisdiction to hear segregation cases. The Supreme Court would never have issued its historic *Brown v. Board of Education* decision declaring that separate was not permitted in education.

Alternatively, consider the implications if a more liberal Congress opted to prevent federal courts from hearing any Second Amendment cases. How would my conservative colleagues like it if the California or the Massachusetts Supreme Court was the final arbiter of the right to bear arms

in their states? Would they think it fair that a single class of citizens – gun owners – were excluded from appeals to our federal judicial system?

Yet that is what H.R. 3313 would do - deny any judicial review, even by the Supreme Court – of any case brought challenging the constitutionality of the Defense of Marriage Act, which clarifies that states need not give full faith and credit to same sex marriages entered into in other states. This legislation would be the first and only instance in which Congress had totally precluded the federal courts from considering the constitutionality of federal legislation.

This runs totally contrary to our bedrock principles. Article III of the Constitution says “the judicial Power of the United States, shall be vested in one supreme Court.” And in the more than 200 years that have passed since *Marbury v. Madison*, judicial review has served as the very touchstone of our constitutional system and our democracy.

It is no wonder that, when court stripping legislation was proposed in the 1970's concerning school prayer, abortion, and busing, conservatives found the proposals to be so repugnant. Then-Yale Law School Professor Robert Bork wrote of the bills, “you’d have 50 different constitutions running around out there, and I’m not sure even conservatives would like the results.” Senator Barry Goldwater stated that the “frontal assault on the independence of the Federal courts is a dangerous blow to the foundations of a free society” and warned “there is no clear or coherent standard to define why we shall control the Court in one area but not another.”

Today, the stakes are no less significant. As emotionally charged and politicized as the issue of same sex marriage has become, we should not use that controversy to permanently damage the courts, the Constitution, and the Congress. At a time when it is more important than ever that our Nation stand out as a beacon of freedom, we must not countenance a bill that undermines the very protector of those freedoms – our independent federal judiciary.

The bill is even more misguided considering that it was a state court, not a federal court, that issued an opinion that permitted same sex marriage. Further, no federal court has even opined on the constitutionality of DOMA.

Make no mistake about it. If this bill is enacted, chaos will ensue when the fifty states and the District of Columbia issue conflicting opinions on DOMA. Then my colleagues on the other side will be clamoring for review by a Supreme Court that has seven Republican appointees and two Democratic appointees.

I urge my colleagues to vote “No” on this legislation.